

Finally, although the ostensible justification for Trinity Broadcasting Network's involvement was the educating of minorities in effective broadcast management, the record amply demonstrates that no effort whatsoever was made to "educate" the outside minority directors of NMTV, who gained virtually no knowledge even about NMTV's operations, let alone broadcasting generally.³

16. When Jane Duff was first asked why NMTV was formed, she responded:

As a result of the Commission's rules that said that there would be opportunities for minorities, and Mr. Crouch at that time had understood that the FCC was encouraging broadcasters to give opportunities to minorities, and at that time I think women were also being considered as -- you know, to get preferential treatment. So, the opportunities for minorities to file and to have ownership, and this was a new concept for, for translators, because prior to this time it was not legal for a station to be a stand-alone station and, and rebroadcast the programming of another station. This would be like a satellite type of a opportunity.

³ TBF asserts based on anecdotal evidence that the Portland station provided an unusual degree of minority programming and employment for minorities; however, there is no competent evidence concerning programming or employment that documents that the Portland station has done more than that which would be expected of any broadcaster under Commission programming and EEO policies. Moreover, as will be discussed below, there is no evidence that any such practices are the result of a corporate policy independently established by the nominal ownership of NMTV. The claims made concerning the Portland station are not unlike the claims made with respect to TBF's own station. Even if the claims for Portland had substance, they would not necessarily distinguish the Portland operation from other Trinity Broadcasting Network operations.

Tr. 1570-71. Thereafter, she again agreed that "the purpose" of NMTV was "minority ownership . . . in the broadcasting industry." Tr. 1571 (emphasis added). Only after further pressing did she concede that there might also be a goal of propagating the gospel, but minority ownership was first. Tr. 1571-72. Finally, however, she was forced to concede that the "overriding goal" of the organization was to propagate the faith with a subsidiary goal of giving opportunities to minorities, especially like-minded minority pastors. Tr. 1577-78.

17. Even a person who knew nothing else about this case would be compelled to conclude from reading the above testimony that Jane Duff's initial claim that NMTV was organized for the purpose of assisting minorities was fundamentally candorless. It reflects a propensity for making unwarranted claims that requires adverse findings as to Jane Duff's demeanor as a witness, as suggested by the Board in Seven Hills. Ultimately, virtually the entirety of TBF's defense rests upon self-serving, incredible claims of this nature.

18. The candorless posture concerning the alleged minority purpose was also reflected in Paul Crouch's written testimony which suggested that the formation of NMTV in September, 1980 "had its origin" in a June, 1979 encounter with former Commission Chairman Richard Wiley, who purportedly

told Paul Crouch of the importance attached to fostering the involvement of minorities in broadcasting. TBF Findings, para. 9. In fact, the record reflects that the formation of NMTV "had its origin" in Trinity Broadcasting Network's desire to create a translator network, with the anticipated minority preference being little more than a means to that end. Glendale Findings, para. 9-10.

b. The Joseph Dunne Letter

19. A second candorless performance is reflected in testimony concerning the October 1, 1991 letter from Joseph Dunne detailing the deficiencies in Phillip Aguilar's performance as a director and recommending that his interest be diluted by the addition of a fourth director, with a recommendation that E.V. Hill might be an appropriate selection. Paul Crouch, Jane Duff and Colby May sought to give the impression that they had disagreed with the adverse views expressed in this letter; however, the facts reflect that the letter's suggestions were implemented precisely as proposed by Joseph Dunne. When confronted with the facts, Jane Duff and Colby May backtracked from their initial attempts to disassociate themselves from the letter; however, Paul Crouch did not. Glendale Findings, Section II(A)(10)(c) and (d).

20. TBF obviously recognizes the adverse implication of this episode. The facts demonstrate that when Phillip

Aguilar's role in NMTV was no longer viewed as satisfactory by Paul Crouch, he was simply neutralized. Accordingly, TBN devotes only a portion of one paragraph to the matter. TBF Findings, para. 139. It recites testimony attempting to minimize the Joseph Dunne letter. It suggests that the letter was in error in suggesting that Phillip Aguilar attended only 2 of 5 meetings of the board since he joined. This is disputed on the basis that there were also meetings by telephone for which no minutes were taken. Two paragraphs before (TBF Findings, para. 137), reference is made to a telephone call made to Phillip Aguilar as a follow-up to a letter from Colby May of September 13, 1991 concerning the Commission's first request for information in the Wilmington proceeding (TBF Exhibit No. 107, Tab A, p. 122-26). TBF suggests that Phillip Aguilar had been copied on this letter; however, the letter does not reflect that Phillip Aguilar was copied and his testimony cited by TBF merely reflects a vague recollection that he may have received something, not necessarily the Colby May letter. The subsequent telephone contact with Phillip Aguilar is cited as one of the "board meetings" without minutes; however, the evidence does not support that the telephone call amounted to even an informal "board meeting" in any meaningful sense. It would rather appear that the purpose of the call was primarily disciplinary -- i.e., to ensure that Phillip Aguilar cooperated in

responding to the Commission's letter, as he had refused to do in connection with the reporting of his felony conviction. There is no other evidence of any telephone calls that might be treated as "board meetings"; although there may well have been more phone calls required by potential embarrassments occasioned by Phillip Aguilar's activities. TBF's continuing attempts to disown the Joseph Dunne letter when Trinity Broadcasting Network/NMTV implemented his proposals in their entirety are wholly candorless.

c. The Sale of the Houston Translator

21. TBF's findings at para. 47-53 perpetuate what is an essentially candorless claim -- that the decision to sell rather than build a translator station in the Houston, Texas, area reflected an exercise of control by the minority directors of NMTV. Thus, TBF's findings omit to mention that the decision was not the subject of any formal or informal action of the NMTV board. Indeed, Paul Crouch was wholly unaware that David Espinoza had become involved in the matter in any way, let alone that he supported selling the permit. Moreover, David Espinoza at his deposition had no recollection of this matter. His written testimony, prepared by counsel, not only attributed to David Espinoza facts of which he had no knowledge, but even facts that were simply wrong. Glendale Findings, para. 105-107.

22. It is rather evident that any disagreement arising on this issue was an essentially personal matter between Jane Duff and Paul Crouch that was never dealt with by NMTV on a corporate basis. Evidently, Jane Duff felt at the time that she personally (not NMTV) was overburdened with work, as is reflected by testimony cited at TBF Findings, para. 53. That Paul Crouch went along with her wishes appears merely to have reflected a recognition that it would not have been prudent to overload the back of such a loyal workhorse, not that he had been outvoted by controlling minority directors. Indeed, what is most significant is that the decision as to the disposition of NMTV's first low power permit was made without any formal corporate deliberation and without any direct involvement by David Espinoza. To claim that this situation evidenced that NMTV was controlled by its minority directors is fundamentally candorless.

d. The Reason for Joint Billing by Colby May

23. A further example of egregious lack of candor is Jane Duff's patently absurd attempt to explain why NMTV's legal fees were billed by Colby May jointly with those of Trinity Broadcasting Network during much of the period under review. Thus, Jane Duff initially sought to justify the practice by citing cost savings arising from the practice. She was, however, forced to back away from this claim, given that it was transparently nonsensical. Glendale Findings,

para. 85.⁴ TBF makes no attempt to defend this testimony. It clearly documents Jane Duff's practice of concocting baseless fictions where, of course, she was not compelled to candor by irrefutable documentary evidence. The candorlessness of Jane Duff here was ultimately so absurd as to be self-refuting; however, it clearly reflects adversely on her demeanor as a witness and precludes reliance on similar self-serving claims by her on which TBF's case largely rests. In addition, her apparent belief that it was necessary to devise such an imaginative fiction to justify the practice of Trinity Broadcasting Network/NMTV joint legal bills is indicative of her awareness that the practice accurately reflected that NMTV was merely a subordinate operating division of Trinity Broadcasting Network, and thus could not be defended on its merits.

e. The Role of Norman Juggert

24. TBF's lack of candor is also illustrated by the attempt to portray Norman Juggert's involvement with NMTV in a misleading manner. Glendale Findings, para. 291-307. Thus,

⁴ The cost savings theory was introduced in connection with the Colby May statements which are MMB Exhibits Nos. 132 and 135. Tr. 1719-23. The Presiding Judge therein questioned the reasonableness of the cost savings explanation. In connection with a later statement, Jane Duff said only that she saw nothing wrong with the practice since she handled the bills for both Trinity Broadcasting Network and NMTV. Thus she clearly abandoned the cost savings explanation. Tr. 1729-30.

in both his written testimony and his oral cross-examination, Norman Juggert attempted to portray his role in NMTV as having involved only a handful of particular matters. In fact, he was involved in numerous other matters that were not disclosed in his written testimony. These matters included advising NMTV as to insurance issues, preparing the Agreement to Provide Business Services and the Television Agreement and Production Agreement concerning the "Joy in the Morning" program, drafting a promissory note, and handling all matters concerning the proposed loan to Community Brace. Moreover, he prepared or reviewed the preparation of the NMTV minutes and was the custodian of the official corporate minute book (a role assigned by the bylaws to the corporate Secretary). Glendale Findings, para. 18, 291. This is clearly indicative of his status as NMTV's principal non-FCC counsel, which is how he was perceived by the outside directors. Indeed, it suggests that he was for all practical purposes the de facto corporate Secretary (which is his de jure role with Trinity Broadcasting Network). Moreover, Norman Juggert never had any ethical concerns arising from his representation of both Trinity Broadcasting Network and NMTV, which would appear to have separate and potentially conflicting interests if they were both independent entities. Glendale Findings, para. 306. This fact can only be viewed as reflecting Norman Juggert's awareness that these nominally separate entities were in fact

the same, so that no conflict situation could arise from his representation of both. TBF in its findings attempts to perpetuate the fiction that Norman Juggert was only Trinity Broadcasting Network's attorney. TBF Findings, para. 196-197. Much of his involvement in NMTV's affairs is not expressly noted, including his role as the custodian of NMTV's official minute book.

f. Candorless Applications and Pleadings

25. Trinity Broadcasting Network/NMTV followed a consistent practice of nondisclosure and concealment both in applications filed with the Commission and in pleadings that arose when its claims were challenged by outside parties. For instance, its Odessa application contained virtually no information from which the Commission could discern the full facts concerning the relationship between Trinity Broadcasting Network and NMTV. Glendale Findings, para. 74. The subsequent applications were essentially the same. After NMTV's claim to the minority exception to the 12 station multiple ownership limitation was challenged, NMTV consistently submitted pleadings that were candorless in portraying NMTV as a truly independent entity while withholding full facts concerning the Trinity Broadcasting Network/NMTV relationship. Glendale Findings, para. 314-43. Ultimately, it was only after two Commission letters of inquiry that sufficient information was extracted to permit an

informed assessment of the extent of Trinity Broadcasting Network's involvement in NMTV, which neither Paul Crouch nor Jane Duff could dispute. Glendale Findings, para. 316-17. At para. 706 of its findings, TBF recognizes, in an argument directed against Glendale, that failure to disclose relevant information may constitute a lack of candor, citing Telephone and Data Systems, Inc., 9 FCC Rcd 938, 945, 74 RR 2d 788, 791 (1994) (TDSI). Indeed, TBF appears to suggest that any such failure would be automatically disqualifying, which is incorrect as will be discussed below. The following comment at para. 33 of TDSI is, however, particularly pertinent to the conduct of Trinity Broadcasting Network/NMTV:

Nelson and USCC had every incentive to suggest that USCC was not in control; thus, there is a strong reason to believe that any inconsistencies and misstatements by Nelson were intentional.

74 RR 2d at 796. The obvious incentive for Trinity Broadcasting Network/NMTV to deny control and the repeated nondisclosures and deceptive claims by NMTV in numerous applications and pleadings necessarily provide a similarly compelling basis for finding intentional misconduct. Moreover, there is no evidence that would justify any other result.

26. With respect to NMTV's applications, Paul Crouch testified in connection with the Odessa application:

but I do recall one thing, I told Mr. May very explicitly, I said, if we go for this and he did make it very clear to me that I believed we were the very first applicant to approach the Commission for this exception. And I said, we're plowing new ground, new territory here and I said, put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission. If they pass on it and approve it, fine, our goal was to acquire as many stations and network affiliates as we possibly could.

Tr. 2674 (emphasis added). The only conclusion that can be drawn from this testimony is that Paul Crouch knew the problematic nature of what the Bureau calls Trinity Broadcasting Network's "bizarre legal theory" and that the only appropriate means of establishing that theory was to make full factual disclosure to the Commission. Further, since such disclosure did not occur, it can only be concluded that Paul Crouch knew what should have been done but chose not to do it. TBF in its findings indirectly responds to this crucial testimony (without directly addressing it) at para. 262. TBF cites testimony subsequent to the above passage that followed after Paul Crouch was confronted with the stark inconsistency between the above testimony and the nondisclosure that in fact occurred. Paul Crouch thereupon sought to recast his prior testimony as having meant only that he told Colby May to submit all the information "he [Colby May] felt necessary" and that he [Paul Crouch] relied solely upon Colby May as to what that "necessary" information was.

This testimony, however, cannot on its face be squared with the unambiguous directive reflected at Tr. 2674. Indeed, Colby May had already told Paul Crouch of his view that the mere fact of the de jure composition of NMTV's board was dispositive. If Paul Crouch had really relied solely upon Colby May, there would have been no need to suggest the provision of more information. Paul Crouch's subsequent attempt to recast his testimony at Tr. 2674 merely serves as a further adverse reflection on his testimonial credibility. Thus, when Paul Crouch was made aware of the possible adverse implications of his testimony at Tr. 2674, he simply concocted a new explanation.

27. TBF also relies in justifying the nondisclosure in its applications on informal contacts between Colby May and a Commission staff person in which it is claimed additional facts were made known. TBF Findings, para. 259-60. The only evidence of record concerning this matter is the testimony of Colby May whose testimonial credibility is impeached by his disingenuous attempts to minimize the significance of the Joseph Dunne letter, discussed above. In any event, his testimony as to precisely what was discussed several years earlier is vague and certainly cannot support a finding that anything close to full and candid disclosure was made, even informally. When one considers the candorless nature of Trinity Broadcasting Network's later written representations,

there is no basis for assuming that whatever informal disclosure may have occurred was of any higher quality. Moreover, oral statements made to an individual Commission staff person cannot be equated with formal written disclosure to the Commission. Thus, it cannot be assumed that oral statements made to one staff person were available to his supervisors or to the Commission itself. Had such information been submitted formally, a higher reviewing authority might have found cause for concern even if the staff member initially responsible for the application did not. Such informal disclosure could not be equated with candor with the Commission itself, irrespective of the content of the off-the-record disclosure.

28. With respect to Trinity Broadcasting Network's performance in pleadings subsequent to the filing of objections by outside parties, TBF makes no findings. The HDO at para. 39 put TBF on notice that its candor was open for consideration under the abuse of process issue. Moreover, its pleadings are part of the record and were the subject of substantial examination. TBF's silence in this respect can only be viewed as a concession that the candor of its pleadings cannot be defended.

g. Disclosure in Other Applications

29. TBF argues that Trinity Broadcasting Network/NMTV were candid with the Commission in that the relationship of

Ben Miller, Jane Duff and Colby May with both Trinity Broadcasting Network and NMTV could be ascertained by reviewing numerous other applications filed by those parties. In point of fact, however, TBF's contention merely further highlights its candorlessness.

30. With respect to Ben Miller, TBF relies upon the fact that he executed certain NMTV applications as the "responsible engineer" while his relationship with Trinity Broadcasting Network was also evident in applications filed by Trinity Broadcasting Network. TBF Findings, para. 203. The characterization of Ben Miller as the "responsible engineer" obviously reflects a careful choice of words by TBF's counsel. In fact, in all but one of the instances cited, Ben Miller is characterized in the application as some form of "consultant". Thus, in MMB Exhibit No. 149, p. 1, 9, he is referred to as "consulting engineer"; in TBF Exhibit No. 101, Tab V, p. 52-54, he is referred to as "engineering consultant"; and in the same exhibit, p. 61, 77, 79-80, 92-96 and 109, 110, 112 and 113, he is referred to as "technical consultant" for four applications. Only in MMB Exhibit No. 224, p. 4 is he described as "technical director", which does not in any event provide any basis for making assumptions as to the nature of his relationship with NMTV.

31. Far from evidencing candor, the attempt to describe Ben Miller as a "consultant" is misleading. It implies that

he was an independent service provider retained by NMTV for a particular purpose. In fact, the record shows that the services provided by Ben Miller were provided without compensation from NMTV as part of his normal duties as an employee of Trinity Broadcasting Network. Moreover, the scope of this "consultancy" is not defined in any documents. According to Ben Miller it is a "verbal agreement" with Jane Duff to do whatever she requests. Glendale Exhibit No. 210, p. 54-55. The characterization of his role with NMTV as that of a "consultant" did not serve to alert the Commission to the true nature of Ben Miller's role at NMTV. Rather, it served only to conceal his true relationship and mislead the Commission. That Trinity Broadcasting Network/NMTV felt it necessary to employ the deception of characterizing Ben Miller as a "consultant" demonstrates their awareness of the impropriety of Ben Miller's actual role, which amounted to de facto director of engineering of NMTV.⁵ Moreover, this deception is perpetuated at TBF Findings, para. 200, wherein Ben Miller's role in supervising the construction of NMTV's two stations is characterized as that of a "consultant".

32. At TBF Findings, para. 66, it is asserted that over 80 documents have been filed with the Commission reflecting Jane Duff's relationship with Trinity Broadcasting Network.

⁵ Indeed, there are documents in the record that identify Ben Miller as NMTV's Director of Engineering. See, e.g., MMB Exhibit No. 249.

The summary of these documents contained in para. 66 does not, however, reflect much about the precise nature of her relationship with Trinity Broadcasting Network. One could derive the impression that she was at most a senior secretary or office manager. It is not readily apparent that she in fact held a principal management position at Trinity Broadcasting Network. At page 145 n.38 of its findings, TBF notes that Colby May has frequently appeared as counsel for Trinity Broadcasting Network and NMTV in filing made by those parties with the Commission. This in itself is of little significance since most attorneys represent more than one client, which is not indicative that such clients are under common control.

33. In sum, even if one accepts the argument that it is incumbent on the Commission to review as many as 80 prior filings before it can find an applicant to have lacked candor, the various filings of Trinity Broadcasting Network and NMTV do not begin to give a full and truthful picture of the extent of their relationship. The ultimate fact remains that it required two Commission letters of inquiry before sufficient facts were forthcoming to permit even a preliminary analysis of the Trinity Broadcasting Network/NMTV relationship.

3. Alleged Instances Of Independent Action By The
Minority Directors Fail To Prove A Lack Of
Control By Trinity Broadcasting Network

34. A central component of TBF's case is premised on a handful of circumstances in which the minority directors of NMTV took actions that were contrary to or independent of the immediate wishes of Paul Crouch. It is urged that such incidents could not have occurred if Paul Crouch in fact controlled NMTV. See, e.g., TBF Findings, para. 643. The underlying fallacy of this theory is that it presupposes a totalitarian style of management in which the owner will invariably insist upon the immediate fulfillment of even the most whimsical of desires. In fact, a more rational style of management would take into account the concerns of subordinates at least in circumstances where the concerns do not threaten the central intentions of the owner. It appears here that in such circumstances, Paul Crouch was willing to make at least token acquiescence on such matters while subtly directing the course of events to achieve his ultimate goals.

35. At para. 643 of its Findings, TBF employs in addressing the alleged instances of directorial independence the rhetorical formula that "there can be no legitimate question that" certain events would not have transpired if Paul Crouch actually controlled NMTV. This formulation has merit at least insofar as it demonstrates what TBF would have to prove to justify the significance it would attribute to the

incidents cited. To the extent that the evidence is ambiguous concerning these incidents, leaving open the possibility that they could have transpired even if Paul Crouch controlled NMTV, they can only be viewed as irrelevant. This is particularly so given the plethora of instances where the directors of NMTV routinely rubberstamped actions set before them by management. Thus, the burden is clearly on TBF to dispositively negate any "legitimate question". It has clearly failed to meet this burden.

a. The Retention of Tyrone Brown

36. A prime example of the subtle, rather than totalitarian, exercise of control is provided by the retention of Tyrone Brown in response to the suggestion of E.V. Hill and/or Phillip Aguilar that it would be desirable to hire a minority attorney to review the problems that arose as a result of challenges to NMTV in the Wilmington proceeding. See, e.g., TBF Findings, para. 160-61. This occurred at the January 1992 annual meeting of NMTV; however it is not reflected in the minutes thereof. TBF Exhibit No. 102, para. 25; MMB Exhibit No. 386. Accordingly, Paul Crouch's position on the matter is not reflected. After the suggestion to hire a minority was adopted, Jane Duff retained Tyrone Brown.⁶

⁶ The record is unclear as to exactly who Tyrone Brown was retained to represent. According to E.V. Hill, he was retained by Trinity Broadcasting Network, and not by NMTV. Tr. 2062. TBF at page 113 n.32 would dismiss this as an

What happened thereafter made a mockery of the original proposal. According to page 113 n.32 of TBF's Findings, "Mr. Brown determined that his representation should be expanded to include TBN." The emphasis in the foregoing quote is supplied to highlight the anomalous claim that it was the attorney who determined who his client would be, rather than vice versa. In fact, it is rather obvious that it was Paul Crouch who made that decision (there being no evidence of any action by NMTV authorizing Tyrone Brown to expand his representation to include Trinity Broadcasting Network). What ensued next is not clearly established by the record. It is not clear what - - if anything -- Tyrone Brown did in the course of his brief employment (whoever his employer may have been). In any event, after a relatively short period, Tyrone Brown simply disappeared without explanation.

37. What actually happened is rather obvious. Although Paul Crouch apparently expressed no overt opposition to this initiative from the minority directors, he proceeded to effectively nullify it in its implementation. Moreover, Jane Duff functioned as his loyal employee in carrying out this scheme, even though it meant frustrating the desire of her

error on E.V. Hill's part; however, there is no basis for doing so, at least insofar as Tr. 2062 reflects his understanding of what happened. Examination of E.V. Hill also ended on Tr. 2062 and TBF made no attempt to inquire further into the possibility of an error in his understanding.

fellow minority directors to get independent legal advice from a minority counsel. This clearly demonstrates that her first loyalty has always rested with Paul Crouch and Trinity Broadcasting Network, not with NMTV as an independent entity. Finally, E.V. Hill and Phillip Aguilar, being "big picture men", never bothered to inquire whether their bright idea had been meaningfully implemented. In sum, Paul Crouch ultimately did what Paul Crouch wanted to do, without bruising any egos along the way. That Paul Crouch did not autocratically veto the proposal at its inception does not reflect that he lacked the control to do so, but merely that he preferred in this instance to achieve his goal by manipulation rather than by a naked exercise of power.

b. The Construction and Sale of Odessa

38. The circumstances surrounding the construction and sale of the Odessa station reflect the same sort of management by manipulation. Glendale Findings, para. 88-102. It may well be that Paul Crouch would have preferred the immediate sale of Odessa as a precursor to acquiring a station in a larger market; however, when this issue first arose in June 1987, the ultimate accomplishment of the underlying goal of trading up was not imperiled by allowing the station to be built since it could be sold at any time. Ostensibly, the directors again affirmed their commitment to the continued operation of Odessa in December 1988. By that time, however,

NMTV had acquired Portland so that Odessa posed a potential problem to further trading up. Only five months later, in May of 1989, the directors approved the sale of Odessa by written consent. Ultimately, therefore, Paul Crouch achieved his initial goal with only a modest delay and, again, without bruising any egos.

39. That Trinity Broadcasting Network/NMTV recognized the questionable significance of this situation is evident from their attempt to claim that the about face as to the future of Odessa was occasioned by unexpected financial reverses in the five months after the December 1988 meeting. There is in fact no objective evidence to support this assertion, suggesting that it is merely a candorless smokescreen designed to obscure the reality of the situation. Indeed, David Espinoza conceded that no reasonable assessment of the Odessa station's viability could have been made in the short time span between the December 1988 meeting and May 1989. Despite his purported concern as to Odessa, David Espinoza had in fact premised his decision to sell the station solely on what he was told without any effort to ascertain the facts for himself. Glendale Findings, para. 96. The claim of an unexpected financial reverse is thus not unlike the contention of an applicant in WWOR-TV, Inc., 7 FCC Rcd 636, 70 RR 2d 752 (1991) that it acted as a result of programming deficiencies of another station, when in fact the licensee of

the other station had assumed control only shortly prior to the applicant's action when it could not have reasonably formed an opinion of the licensee's programming. The Commission viewed the applicant's claim to be indicative of its abusive intent.

40. Obviously recognizing the questionable nature of its claim that the about face on Odessa resulted from unexpected financial reversals, TBF at page 54 n.24 attempts to justify its posture with reference to financial and tax documents that reflect that the Odessa station averaged a monthly income of \$52,050 during its operation for just over two months in 1988 but that the monthly income for 1989 averaged only \$33,068. This is a specious argument since the decision to sell Odessa was made relatively early in 1989, at least by May and possibly earlier. The overall decline in average monthly revenue for the entire year could well reflect that, having decided to sell the station, Trinity Broadcasting Network/NMTV made little effort to develop it during the latter part of the year. Thus, the decline in average monthly revenue for the entire year could well be the result of, not the cause for, the decision to sell the station.

41. Equally unavailing is the contention that there was an unexpected failure to obtain cable television carriage. There is no evidence of what expectation in fact existed at the time the decision to go forward with the construction of

Odessa was made. There is no documentation of the nature of the efforts to procure cable carriage. There is finally no evidence that the lack of cable carriage would have had a substantial adverse impact on the revenue expectations that existed when the decision to go forward was made. This cannot be merely assumed, especially since the audience for religious programming is likely to be more committed than the audience for general entertainment programming and therefore more likely to make special efforts such as employing A/B switches or better quality antennas to compensate for the lack of cable carriage.

42. In sum, the contention that the sudden about face as to the Odessa station was the product of unanticipated financial reverses appears to be little more than an after-the-fact rationalization concocted because TBF recognized that the facts would not otherwise support the claim it wished to make. Odessa was in fact sold because Paul Crouch had always intended that the station be sold in order to permit the acquisition of a station in a larger market. At very least, it must be found that TBF has failed to substantiate its claim that the only "legitimate" explanation for these circumstances is that the minority directors -- rather than Paul Crouch -- controlled NMTV.

c. The Houston Translator

43. As discussed above, TBF's claim regarding the alleged overruling of Paul Crouch's desire to construct the Houston translator is so specious as to be candorless. While Paul Crouch might have preferred to construct Houston, it was evidently not a matter of sufficient importance to cause undue stress to a valuable employee who felt overworked. There was in fact no corporate action by NMTV concerning the matter nor was David Espinoza involved in the ultimate decision in any way.

d. The Purchase of the Portland Studio

44. TBF also attaches significance to a purported disagreement that occurred at the December 1988 board meeting regarding the feasibility of an offer to buy a studio building in Portland. The asking price was \$650,000. Paul Crouch proposed that NMTV should offer \$400,000. Jane Duff and David Espinoza felt that an offer of \$500,000 was more appropriate. David Espinoza attributed his view to a "gut feeling" that \$400,000 was too low. TBF Findings, para. 109.

45. From this scenario, TBF extracts the following conclusion:

There can be no legitimate question that, if Dr. Crouch or TBN intended to control and did control NMTV, NMTV would have authorized the amount that Dr. Crouch wanted to spend for the Portland studio, and not a penny or \$100,000 more, as actually happened.

TBF Findings, para. 643. In fact, however, the discussion that occurred does not appear to have been concerned with the general issue of how much should be authorized for studio acquisition but rather with the practical question of what would be a reasonable offer for a particular piece of property in view of the \$650,000 asking price. There is nothing to indicate that Paul Crouch opposed in principle spending more than \$400,000 on a studio, only that he felt there was some chance that, notwithstanding the asking price, NMTV might be able to get the particular property at issue for \$400,000. In point of fact, we are later told that the amount spent on the Portland studio ultimately exceeded one million dollars. TBF Findings, para. 184. There is no evidence of any Paul Crouch opposition to the much larger amount ultimately spent. In any event, TBF's conclusion concerning this relatively minor matter could be warranted only if one accepted the totalitarian style of management to be the only style one could "legitimately" expect to find.

e. Situations Demonstrating Paul Crouch's Control

46. The incidents purportedly demonstrating the independence of the minority directors of NMTV are both few and ambiguous. They must be contrasted with circumstances that clearly reflect that, when important interests were at stake, Paul Crouch assumed control and directed the course of